Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

No. 80-204

RYDER TRUCK LINES, INC., Petitioner

v.

HARRIS FARMER, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF GEORGIA

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August 1, 1980.

QUESTIONS PRESENTED

1. Whether the arbitrary assignment of workers' compensation liability to the regulated common carrier violates the equal protection clause of the Fourteenth Amendment.

2. Whether the state court's assessment of liability to the regulated carrier constitutes an invalid interference with the flow of interstate commerce.

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The petitioner Ryder Truck Lines respectfully prays that a writ of certiorari be issued to review this judgment and opinion of the Georgia Supreme Court entered in this proceeding on April 22, 1980.

OPINION BELOW

The opinion of the Supreme Court of the State of Georgia, 245 Ga. Reports 734, appears in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on April 22, 1980. A timely petition for rehearing was denied on May 7, 1980 (the petition for rehearing and the denial thereof appear in the Appendix hereto), and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

QUESTIONS PRESENTED

1. Whether the arbitrary assignment of workers' compensation liability to the regulated common carrier violates the equal protection clause of the Fourteenth Amendment.

2. Whether the state court's assessment of liability to the regulated carrier constitutes an invalid interference with the flow of interstate commerce.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 49:
Section 303(b)(6) Definitions and exceptions–
Definitions, Vehicles excepted from operation of law
(Copy of 303(b)(6) included in Appendix)
Code of Federal Regulations, Title 49:
Section 1057.2 Definitions
(Copy of 1057.2 included in Appendix)
Section 1057.4 Augmenting Equipment
(Copy of 1057.4 included in Appendix)
Georgia Workers' Compensation Act,
Georgia Code Annotated, Title 114:
Section 101 "Employer" and "Employee" defined
(Copy of Title 114-101 included in Appendix).

STATEMENT OF THE CASE

Harris Farmer, the respondent herein, was injured on November 8, 1977 in Gordon County, Georgia while driving a tractor trailer owned by Dan Martin Trucking Company. At the time of the accident, Martin had four trucks, and four drivers, all of which were permanently leased to Hames Trucking Company out of Jonesboro, Georgia (R. 261,262,263). Under the terms of the lease to Hames Trucking Company, each tractor has an individual, continuing lease whereby Dan Martin actually retains possession of the vehicle and furnishes the driver to Hames Trucking Company (R. 271,285,286,287). Hames deducts 17% of the revenue produced by each trip and then pays Martin the remaining 83%. Out of his 83%, then Martin pays the respondent 25% directly (R. 270,271,279). Martin's contract with Hames Trucking Company allows him to secure a return load with any other trucking company or shipper that he can locate in order that he not have to return to the state with an empty trailer (R. 272).

When the driver has reached the end of the outbound trip, he is authorized by Martin to find another return load, to which end he then signs a "one-way trip lease" to haul cargo back into Georgia (R. 273). While Hames Trucking Company is an "exempt" or "non-regulated" carrier (under the provisions of 49 U.S.C. section 303(b)(6) solely based upon its cargo), Ryder Truck Lines, as a regulated carrier, prior to signing a lease with the driver, must inspect the truck and satisfy itself as to the driver's qualifications. This is consistent with Ryder's statutory responsibility to insure that the drivers comply with the Interstate Commerce Commission Regulations (R. 319). Removable Ryder placards would then be placed over the permanent Hames' markings on the doors of the tractor (R. 292). When the driver arrives back in Georgia and unloads his cargo, he breaks the lease. Ryder receives 27% of the revenue produced by the trip, the remaining 73%, out of which the respondent is paid, is paid by Ryder to Dan Martin (R. 281,282). Martin, the private carrier, acknowledged that he was, at all times, responsible for

maintenance of the vehicles, both at home and on the road. Martin and his drivers pull maintenance and Martin supplies the parts (R. 302,303). In addition, Martin acknowledged that he supervises maintenance (R. 303) and is also responsible for the purchase of gas and oil (R. 283,293,294), as well as for traffic citations, fines and damages to the cargo (R. 280,281). Martin is directly responsible for paying the drivers (R. 268,269,270,290). Martin owns the trucks and the ultimate responsibility for hiring and firing drivers is with him (R. 279,297,326,332,333). Martin disciplines the drivers himself if they are not driving correctly: he admitted the only action that Ryder or Hames could take was to refuse to load the truck, and neither could take Martin's driver off the truck and replace him with one of their own (R. 303,304-307).

The respondent testified that he was hired by Dan Martin and was paid directly by Martin by check, receiving 25% of the revenues produced from each run (R. 97,99). The representative from Ryder stated that the one-way trip lease was regulated under the Interstate Commerce Act, which allows the carrier to augment equipment. Where, as here, the truck has just hauled a load of freight, exempt from ICC Regulations, Ryder can, as a regulated carrier, load regulated freight on it so long as it is hauled back in the direction of the home base of the truck. The purpose is to avoid empty back hauls (R. 167,168). This is, however, an "equipment lease" and Ryder does not take physical possession of the truck (R. 173).

On this particular trip, the respondent left for Chicago with a load of poultry under Hames' markings. When he reached Chicago and unloaded, he called Ryder Truck Lines and signed a one-way trip lease for cargo to return to Atlanta. He presented his credentials, and Ryder inspected the vehicle (R. 110,111, 112). Farmer, the respondent, was given the choice of cargo, and he chose the route he would take to return to Atlanta. While he was required by ICC regulations to place temporary Ryder placards on the tractor, Ryder did not tell him how to operate his truck other than to give him a destination and a time of arrival (R. 114,116,117). During the return trip from

Chicago to Atlanta an accident occurred, which was the subject of all proceedings conducted thus far in the matter.

FEDERAL QUESTION

Following an adverse ruling by the Administrative Law Judge, the Georgia State Board of Workers' Compensation on October 20, 1978, entered an Award denying the claim of the respondent against both Hames Trucking Company and Ryder Truck Lines on the grounds that under applicable common law tests, Farmer was not the employee of either. Upon appeal, the Award was affirmed by the Superior Court of Gordon County on January 24, 1979. The case was then appealed to the Court of Appeals of the State of Georgia, which in a Full Bench Decision, dated November 30, 1979, (a copy of which appears in the Appendix hereto), upheld the finding below that the respondent was not an employee of either Hames Trucking Company or Ryder Truck Lines. Upon timely application, the Supreme Court of Georgia granted certiorari stating specifically:

> "The Court is particularly concerned with the following: The applicability to this case of the 'statutory employer' provision (Code Ann. section 114-112) in light of *Holt v. Travelers Insurance Company*, decided 12-05-79." (The notice from the Georgia Supreme Court granting certiorari is attached to the Appendix.)

Neither Georgia Code Annotated section 114-112, nor the *Holt* case were concerned with the effect of the ICC Regulations upon the issue of employment. Ga. Code Ann. section 114-112 states in part:

> "Every claim for compensation under this Section shall be in the first instance presented to and instituted against the immediate employer, but such proceedings shall not constitute a waiver of the employee's right to recover compensation under this Title from the principle or intermediate

contractor."

In its surprising opinion, the Georgia Supreme Court, in fact, changed the style of the case, separated the defendants, and reversed the decision of the State Board of Workers' Compensation and the Courts below as those applied to Ryder alone. Basing its opinion not upon the issue for which certiorari had initially been granted, but rather upon the effect of the ICC Regulations upon the regulated, or non-exempt carrier, the Court held the respondent to be a "statutory employee" of Ryder Truck Lines. The petitioner, in its Motion for Rehearing, set forth its right to equal protection under the Fourteenth Amendment of the United States Constitution. That Motion was denied.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE SUPREME COURT OF GEORGIA CONSTITUTES STATE ACTION IN VIOLATION OF THE PETITIONER'S FOURTEENTH AMENDMENT RIGHTS TO EQUAL PROTECTION OF THE LAWS.

The petitioner in this action is a common carrier involved in interstate and intrastate commerce. As such, it is subject to the Interstate Commerce Act and its accompanying regulations. Hames Trucking Company, originally a co-defendant, is also engaged in interstate and intrastate transportation of goods, but it is "exempt" from the effect of these regulations simply because of the type of cargo it transports.

Here the petitioner, a regulated carrier, entered into an equipment lease with the Dan Martin Trucking Company, a "private carrier", in which the driver was furnished by the latter. Said driver, Farmer, was injured while fulfilling Martin's obligations under the lease. The Georgia Supreme Court overruled the State Board of Workers' Compensation and the lower appellate courts of the State, suspended the prior common law

method of determining an employer/employee relationship, and attached liability to the regulated carrier solely by virtue of its being subject to the controls imposed by the ICC Regulations. This decision should fall not only because it denies the equal protection of the laws to the regulated carrier, but also because it is fundamentally incorrect.

The Fourteenth Amendment to the Constitution of the United States states that, "No State shall make or enforce any law which . . . shall deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction equal protection of the laws." U. S. Const. Amend. XIV, section 1. Corporations are persons within the meaning of this Amendment. *Liggett Co. v. Lee*, 288 U.S. 517; *Grosjean v. American Press Co. Inc.*, 297 U.S. 233. Naturally, most cases of this type are seen to involve a challenge to a state statute setting up a classification. Nevertheless, the prohibition of the Fourteenth Amendment applies to, and may be violated by, state action of every kind, including judicial action. *Shelley v. Kraemer*, 334 U.S. 1.; *Central Kentucky Natural Gas Company v. Railway Commission of Kentucky*, 37 F.2d 938 (E.D. Ky.).

In the case of *Chicago, M. & St. P. Ry. Co. v. Westby*, 178 F. 619, a statute enlarging the common law liability of common carriers for injury to their employees was held void as a denial of the equal protection of the laws by reason of its being restricted in its scope to common carriers. The court in that case stated:

> "In the face of the constitutional prohibition of unequal laws, there are three indispensable conditions to a constitutional imposition of liabilities or burdens upon, or a constitutional grant of rights or privileges to, the members of one class that other members of the state do not bear or enjoy: (1) There must be such a difference between the situation and the circumstances of all the members of the class and the situation and circumstances of other members of the state in relation to the subjects of the discriminatory legislation as presents a just and natural reason of necessity or propriety for the difference made by the law

in their liabilities and rights. While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification . . . (2) No person who does not belong to the class may be included therein, and all persons with the influence of the legislation relative to the class must be treated alike thereby. (3) All who are in a situation and circumstances relative to the subject of the discriminatory legislation indistinguishable from the situation and circumstances of the members of the class must be brought under the influence of the legislation and treated by it in the same way as other members of the class." *Chicago M. & St. P. Ry. Co. v. Westby, supra* at 624, 625.

If any of these conditions are disregarded, parties within or without the class are deprived of the equal protection of the laws. In relation to the subject matter of this action, i.e. the existence of an employer/employee relationship, there is no reason of necessity or propriety to separate the regulated common carriers from private carriers. There is even less reason to discriminate against the regulated carrier, as against a non-regulated common carrier such as Hames Trucking Company which is exempt solely because it was transporting poultry rather than frozen pies. The Georgia Supreme Court decision makes the regulated common carrier a "statutory employer" while simultaneously applying common law principles to the non-regulated carrier and the private carrier. We do not contend the court should ignore the existence of the ICC Regulations which apply to the regulated carriers, but simply argue that the court should apply the common law principles of determining employer/employee relationships to all truckers within the State, taking into consideration the ICC Regulations

only as they were meant to apply. Equal protection of the laws means exemption from any greater burden and charges than are equally imposed upon all others under like circumstances.

Aside from the unequal situation within the State of Georgia, the decision in question emphasizes the more important problem which exists on a recurring basis in interstate commerce. By this decision, the regulated carriers operating within the State must accept liability for compensable injuries to each individual driver involved in a "one-way trip lease". Ryder Truck Lines alone enters into approximately 4,295 such leases per month. It is established that the effect of this "augmentation of equipment" by regulated carriers is to allow the exempt and private carriers to continue to operate economically by the avoidance of "dead heading" or returning to the home base with an empty truck. For example, in the present case, Martin, the private carrier would spend almost two hundred dollars in fuel and maintenance costs to haul an empty trailer from Chicago to Atlanta. This does not include the salary of the driver or the time expended in profitless activity. In the long term, "dead heading" means "out of business". Whatever methods the regulated carriers adopt to protect themselves from the liability thus imposed by this decision will to some extent curtail this practice which will, in turn, adversely effect the entire trucking industry.

In addition, as noted in the second reason stated below, other states disagree with Georgia on this issue and there exists, therefore, no uniformity. This in itself is a barrier to the practice of augmentation of equipment, and any excess exposure or liability imposed by the states is detrimental to this beneficial practice. It is, however, not the imposition of liability by the state to which the petitioner takes exception, but the arbitrary and discriminatory manner in which it is done. There is no difference between the situation and circumstances of the regulated carriers upon whom the liability automatically falls and those of the remaining carriers operating within the State of Georgia relative to the workers' compensation issue involved.

Further, the correctness of the decision itself is open to

serious question in that even considering the controls implied by the ICC Regulations, the actual day to day control of a driver is not in the hands of the petitioner who only inspects the vehicle, ascertains the driver's qualifications, and exercises such limited control over the vehicle as to protect the interest of the shipping public. The respondent in this case is an absolute stranger to the petitioner. The petitioner did not hire him, did not pay his wages, does not discipline or supervise him and, more importantly, has no right to remove him from his position, even if he were to cause a violation of the ICC Regulations in question.

There is no sound reason of necessity or propriety for the difference of liabilities which this decision imposes upon the members of the class of carriers it forms and the other carriers in the state in same situation and circumstances. The ruling creates a situation where the driver/employee has three rotating employers at one time or another during the course of a single round trip. In no other instance does indicia for determining control and responsibility vary as frequently as the shifting label of employer in this case. There is no justification or consistency of reasoning in the categorization of employers. This decision denies to a great number of said common carriers the equal protection of the laws, violates the Fourteenth Amendment to the Federal Constitution and should be reviewed on certiorari.

2. THE GEORGIA COURT'S DECISION CREATES SIGNIFICANT BURDENS ON INTERSTATE COMMERCE

The Georgia Supreme Court's decision in this case is an example of the disunity and confusion in the area of workers' compensation law as it relates to interstate commercial trucker. State Courts' inconsistency in applying workers' compensation statutes to situations involving injuries which occur while a truck is leased for a single one-way trip by an interstate carrier from a private carrier has created a jumble of contradictory law and a severe burden on the flow of interstate commerce. The

decision of the Georgia Court holding the regulated carrier/ lessee liable for workers' compensation benefits is an unconstitutional interference with interstate commerce.

The varying state rulings on the issue of responsibility for workers' compensation have led to a situation which is disadvantageous for both the regulated carrier and the private carrier leasing his trucks for a single, one-way trip. Neither party can be certain of its responsibility for providing workers' compensation coverage for the driver due to confusion over which party is the employer within the meaning of each state workers' compensation statute. Liability for workers' compensation may be determined by the situs of the accident, the home of the injured employee, or the state where the contract was concluded between the parties. Unfortunately, the responsibility for this liability may differ in each location.

State Courts' approach to this problem has been to examine each case upon its particular facts without giving adequate concern for the financial burden attending responsibility for workers' compensation coverage and the inevitable consequences of these random determinations. Several states have ruled that the private carrier, Dan Martin Trucking Company in the present case, has primary control over the drivers and should assume responsibility for workers' compensation coverage. *Rantis v. Michicago Motor Express*, 333 Mich. 73, 52 N.W. 2d 602; *Eagen v. K. & A. Truck Lines, Inc.*, 254 Ia. 914, 119 N.W. 2d 805; *Wilds v. Morehouse*, 152 Neb. 749, 42 N.W. 2d 649; *Behner v. Industrial Commission*, 154 Ohio St. 433, 96 N.E. 2d 403. These decisions emphasize the control maintained by the private carrier over the driver; the right to fire, responsibility for payment of the driver, and the duty to maintain the truck in good working condition during the course of the trip.

In direct contradiction, a few states have held the regulated carrier liable for workers' compensation benefits. *McGill v. Bison Fast Freight*, 245 N.C. 469, 96 S.E. 2d 438; *Patton v. Patton*, 308 S.W. 2d 739 (Mo.). These decisions are grounded upon the regulated carrier's control mandated by 49 C.F.R. 1057.4, the Interstate Commerce Commission's provision for

augmenting equipment. This control includes approval of the driver, inspection of the equipment, and public identification of the truck as belonging to the regulated carrier by use of placards. Still another jurisdiction has held that both the regulated carrier and the private carrier are liable for the injured employee's compensation benefits. *Long v. Sims Motor Transport Lines*, 124 Ind. App. 504, 117 N.E. 2d 276; *Jackson Trucking Co., Inc. v. Interstate Motor Freight*, 122 Ind. App. 546, 104 N.E. 2d 575.

The result of these conflicting decisions has been to create confusion within the industry as to who assumes responsibility for the coverage of the driver. For example, on a trip from Nebraska to Michigan, the responsibility will shift with the crossing of each state line. This creates an intolerable burden on the flow of interstate commerce. Neither the regulated carrier nor the private carrier wants the burden of providing for workers' compensation coverage but both are forced to carry the coverage or assume the risk. The uncertainty is exacerbated when states reach far beyond their boundaries and force regulated carriers to assume the burden of providing benefits for injured truckers based on a nexus with the employee or contracting parties. *Patton v. Patton, supra.*

Workers' compensation coverage is a costly burden on the regulated carrier. The number of one-way trip leases between regulated carriers and private carriers is huge and the cost of providing temporary coverage may well outweigh the benefits regulated carriers derive from one-way trip leases. The cost involved in compliance with each state's unique interpretation of the employer/employee relationship and its application of its workers' compensation statute creates an unjustified burden on interstate commerce. *Bibb v. Navajo Freight Lines*, 359 U.S. 520, 526. *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, 445.

If the lack of uniformity among the states continues it could result in regulated carriers routing trips in a less direct manner to avoid travelling through states in which they might incur liability for injured drivers. *Raymond Motor Transportation,*

Inc. v. Rice, supra at 445. The alternative is that the dissimilar regulations discourage the use of the one-way trip lease. This will have a financially disastrous effect on the private carriers who will be forced to haul empty trucks back to home bases following deliveries. Regulated carriers that continue to use one-way trip leases would favor drivers, private carriers, and contracts originating from states where the workers' compensation laws are most favorable. All of these possibilities demonstrate the potential seriousness of the burden on interstate commerce if the situation is allowed to continue on the present random course.

The efforts of the states in applying workers' compensation laws to regulated carriers leads to more problems than solutions. The states should be barred from the arbitrary choosing of which employer to make responsible for compensation coverage. This is an area in which congressional guidance is appropriate and state action is inappropriate and burdensome on commerce. Congress and the Interstate Commerce Commission implemented the Augmented Equipment Regulation, 49 C.F.R. 1057.4, to aid commercial truckers and discourage the expensive, wasteful practice of hauling empty trailers when there are available goods to be hauled. This regulation provides many private carriers with the margin of profit needed to remain in business. State interference through the unrestrained imposition of workers' compensation coverage interferes with Congress' goal in creating the Augmented Equipment Regulation. If unabated this interference could virtually terminate the usefulness of the Regulation by making it impractical and unprofitable for regulated carriers to take advantage of the provision and its purpose. Power to regulate commerce was given to the federal government "to make impossible the recurrence of the evils which had overwhelmed the Confederation, and to provide the necessary basis of national unity by insuring 'uniformity of regulation against conflicting and discriminating state legislation'." *Houston, East & West Texas Ry. Co. v. United States*, 234 U.S. 342, 350. The conditions and circumstances of travel and one-way trip leases are substantially

the same throughout the country. The states intervention into commerce by imposing their local workers' compensation laws on regulated interstate carriers creates an unnecessary and expensive burden on commerce.

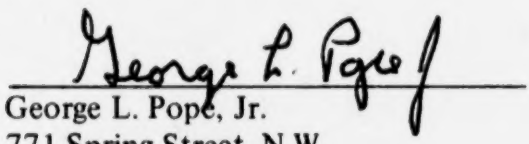
If state workers' compensation statutes are to be applied, there should be some regularity in defining "employer", "control", and in determining which state statute applies in which circumstances. The number of conflicting decisions and the potential disruptive impact on interstate commerce justify the grant of certiorari to review the judgment below.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Georgia State Supreme Court.

Respectfully submitted,

SWIFT, CURRIE, McGHEE & HIERS



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August 1, 1980

APPENDIX

United States Code, Title 49
Section 303(b)(6) Definitions and exceptions.

Vehicles excepted from operation of law

(b) Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation: *Provided,* That the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": *Provided further, however,* That notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shell fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products); . . . .

Code of Federal Regulations, Title 49
Section 1057.2 Definitions

(a) *Authorized carrier.* A person or persons authorized to engage in the transportation of property as a common or contract carrier under the provisions of section 206, 207, or 209 of the Interstate Commerce Act, 49 U.S.C. 306, 307, or 309.

(b) *Equipment.* A motor vehicle, straight truck, tractor, semitrailer, full trailer, combination tractor-and-trailer, combination straight truck and full trailer, and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c) *Interchange of equipment.* The physical exchange of equipment between motor common carriers or the receipt by one such carrier of equipment from another such carrier, in furtherance of a through movement of traffic, at a point or points which such carriers are authorized to serve.

(d) *Regular employee.* A person not merely an agent but regularly in exclusive full-time employment.

(e) *Agent.* A person duly authorized to act for and on behalf of an authorized carrier.

(f) *Owner.* A person (1) to whom title to equipment has been issued, or (2) who as lessee has the right to exclusive use of equipment for a period longer than 30 days, or (3) who has lawful possession of equipment and has the same registered and licensed in any State or States or the District of Columbia in his or its name.

(g) *Private carrier.* A person as defined in section 203(a)(17) of the Interstate Commerce Act.

(h) *Shipper.* A person who consigns or receives property which is transported in interstate or foreign commerce.

Code of Federal Regulations, Title 49
Section 1057.4 Augmenting Equipment

Other than equipment exchanged between motor common carriers in interchange service as defined in section 1057.5, authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:

(a) *Contract requirements.* The contract, lease, or other arrangement for the use of such equipment:

(1) *Parties.* Shall be made between the authorized carrier and the owner of the equipment.

(2) *Written contract required.* Shall be in writing and signed by the parties thereto, or their regular employees or agents duly authorized to act for them in the execution of contracts, leases, or other arrangements.

(3) *Minimum duration of 30 days when operated by lessor.* Shall specify the period for which it applies, which shall be not less than 30 days when the equipment is to be operated for the authorized carrier by the owner or employee of the owner, excepting:

(i) *Equipment used in agricultural or perishable operations.* That subject to the proviso in (c) of this subdivision such 30-day minimum period shall not apply to equipment, with driver:

(a) Where the motor vehicle so to be used is that of a farmer or a cooperative association or a federation of cooperative associations, as specified in section 203(b)(4a) or (5) of the Interstate Commerce Act, or is that of a private carrier of property by motor vehicle as defined in section 203(a)(17) of the Act and is used regularly in the transportation of property of a character embraced within section 203(b)(6) of the Act or perishable products manufactured from perishable property of a character embraced within section 203(b)(6), and such motor vehicle is to be used by the motor carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based; or

(c) *Provided.* In either instance that prior to the execution of the lease, the authorized carrier receives and retains a statement signed by the owner of the equipment, or someone duly authorized to sign for the owner, authorizing the driver to lease the equipment for the movement or movements contemplated by the lease, certifying that the equipment so leased meets the qualifications enumerated in (a) or (b) of this subsection, and specifying the origin, destination, and the time of the beginning and ending of the last movement which brought the equipment within the purview of this subsection.

(4) *Exclusive possession and responsibilities.* Shall provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of said contract, lease or other arrangement, except:

(i) *Lessee may be considered as owner.* Provision may be made therein for considering the lessee as the owner for the purpose of subleasing under these rules to other authorized carriers during such duration.

(ii) *Household goods, carrier: intermittent operations under long-term lease.* When entered into by authorized carriers of household goods, for the transportation of household goods, as defined by the Commission, such provisions need only apply during the period the equipment is operated by or for the authorized carrier, lessee.

(5) *Compensation to be specified.* Shall specify the compensation to be paid by the lessee for the rental of the leased equipment . . . . The contract also shall specify, regardless of the method or manner in which compensation of the lessor is determined, the terms and conditions as to when payment of compensation is due and payable to the lessor and the circumstances, if any, when such compensation, in whole or in part, will be withheld.

(6) *Duration to be specific.* Shall specify the time and date or the circumstances on which the contract, lease, or other arrangement begins, and the time or the circumstances on which it ends. The duration of the contract, lease or other arrangement

shall coincide with the time for the giving of receipts for the equipment as required by paragraph (b) of this section; and

(7) *Copies of lease and their distribution; copy to be carried on vehicle.* Shall be executed in triplicate; the original shall be retained by the authorized carrier in whose service the equipment is to be operated, one copy shall be retained by the owner of the equipment, one copy shall be carried on the equipment specified therein during the entire period of the contract, lease, or other arrangement, unless a certificate as provided in paragraph (d)(2) of this section is carried in lieu thereof.

(b) *Receipts for equipment to be specific.* When possession of the equipment is taken by the authorized carrier or its regular employee or agent duly authorized to act for it, said carrier, employee or agent shall give to the owner of the equipment, or the owner's employee or agent a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is taken; and when the possession by the authorized carrier ends; it or its employee or agent shall obtain from the owner of the equipment, or its regular employee or agent duly authorized to act for it, a receipt specifically identifying the equipment and stating therein the date and the time of day possession thereof is taken.

(c) *Safety inspection of equipment by the authorized carrier.* It shall be the duty of the authorized carrier, before taking possession of the equipment, to inspect the same or to have the same inspected by a person who is competent and qualified to make such inspection and has been duly authorized by such carrier to make such inspection as a representative of the carrier in order to insure that the said equipment complies with the Motor Carrier Safety Regulations of the Federal Highway Administration of the Department of Transportation . . . .The person making the inspection shall certify the results thereof on a report in the form hereinafter set forth, which report shall be retained and preserved by the authorized carrier, and if his inspection discloses that the equipment does not comply with the requirements of the said safety regulations, possession thereof shall not be taken . . . . .

(d) *Identification of equipment as that of the authorized carrier.* The authorized carrier acquiring the use of equipment under this rule shall properly and correctly identify such equipment during the period of the lease, contract, or other arrangement in accordance with the Commission's requirements in Part 1058 of this chapter (Identification of Vehicles). If a removable device is used to identify the acquiring authorized carrier as the operating carrier, such device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the acquiring authorized carrier's own series so as to keep proper record of each of the identification devices in use.

(1) *Identification to be removed when lease terminated.* The authorized carrier operating equipment under this part shall remove any legend, showing it as the operating carrier, displayed on such equipment, and shall remove any removable device showing it as the operating carrier, before relinquishing possession of the equipment.

(e) *Driver of equipment to be in compliance with safety regulations.* Before any person other than a regular employee of the authorized carrier is assigned to drive equipment operated under this part, it shall be the duty of the authorized carrier to make certain that such driver is familiar with, and that his employment as a driver will not result in, violation of any provision of the Motor Carrier Safety Regulations of the Federal Highway Administration of the Department of Transportation.

(f) *Record of equipment to be maintained; shipping documents to identify the authorized carrier.* The authorized carrier utilizing equipment operated under this part for periods of less than 30 days shall prepare and keep a manifest or other documents covering each trip for which the equipment is used in its service, containing the name and address of the owner of such equipment; point of origin, the time and date of departure, the point of final destination, and the authorized carrier's serial number of any identification device affixed to the equipment. During the time that equipment subject to this part is operated

there shall be carried with the equipment, bills of lading, waybills, freight bills, manifests, or other papers identifying the lading, and containing the foregoing information, which shall clearly indicate that the transportation of the property carried is under the responsibility of the authorized carrier, which papers shall be preserved by the authorized carrier. This section shall also apply with respect to vehicles leased for periods of 30 days or more unless the required information is kept at a terminal or office as a part of the records of the authorized carrier.

Georgia Worker's Compensation Act, Georgia Code Annotated.

114-101 "Employer" and "employee" defined

"Employer" shall include the State of Georgia and all departments, instrumentalities and Authorities thereof, each county within the State including its school district, each independent public school district, any municipal corporation within the State and any political division thereof, any individual, firm, association or corporation engaged in any business, except as hereinafter provided, and the receiver or trustee of the same . . . . If the employer is insured, this term shall include his insurer as far as applicable.

"Employee" shall include every person in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is not in the usual course of the trade, business, occupation or profession of the employer and, except as hereinafter provided, minors are included even though working in violation of any child labor law or other similar statute: Provided, that nothing herein contained shall be construed as repealing or altering any such law or statute. Any reference to any employee who has been injured shall, when the employee is dead, include also his legal representatives, dependents and other persons to whom compensation may be payable, pursuant to the provisions of this law . . . .

Supreme Court, U. S.
FILED
AUG 2 1980
MICHAEL RODAK, JR., CLERK

No 80-204

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

RYDER TRUCK LINES, INC., Petitioner

v.

HARRIS FARMER, Respondent

APPENDIX

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF GEORGIA

GEORGE L. POPE, JR.
771 Spring Street, N.W.
Atlanta, Georgia 30379
(404) 881-0844

Counsel for Petitioner,
Ryder Truck Lines, Inc.

APPENDIX

Ryder Truck Lines v. Harris Farmer

Notice of denial of motion for rehearing,
Supreme Court of Georgia

Decision of Supreme Court of Georgia

Notice granting the writ of certiorari,
Supreme Court of Georgia

Decision of Court of Appeals of Georgia

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

DEAR SIR: ATLANTA 5/7/80

The motion for a rehearing was denied today:

Case No. 35883, Farmer v. Ryder Truck Lines, Inc., et al.

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk

In the Supreme Court of Georgia

Decided: 4/22/80

35883. FARMER v. RYDER TRUCK LINES, INC., et al.

HILL, Justice.

Harris Farmer was totally disabled in an accident while driving a truck owned by Dan Martin. Martin owned four trucks which were under an equipment lease to Hames Trucking Company. Mr. Farmer was one of three truck drivers employed by Dan Martin. Martin had no worker's compensation insurance in effect at the time of the accident.

Hames Trucking Company, headquartered in Clayton County, Georgia, is authorized to haul exempt commodities only. Under the terms of the equipment lease with Hames, Martin received 83% of the outbound shipping charge and Martin was entitled to all revenue from return loads that were trip leased to a common regulated carrier. Martin was responsible for finding return loads. Pursuant to the equipment lease, Martin was to furnish at his expense "competent, qualified, licensed and experienced" drivers who were to be the employees of Martin, but Hames reserved the right to request removal of any unqualified driver. Martin was to have exclusive control, direction, jurisdiction and supervision of the drivers, with Hames only having the authority to designate the destination of outgoing loads.

Upon delivering a load of exempt poultry to Chicago for Hames Trucking Company, Farmer went to Ryder Truck Lines, Inc., in Chicago and obtained a load of regulated commodities for a return haul to Georgia. Farmer signed a trip lease agreement as agent of the lessor (stipulated by the parties to be Martin).

Under the terms of the trip lease agreement, the lessor (Martin) leased the tractor and trailer to Ryder under the

"direction and control of Ryder Truck Lines, Inc." The tractor and trailer were under the "exclusive possession, control, and use" of Ryder, who assumed "full responsibility in respect to the equipment it is operating to the public, the shippers, and all regulatory bodies having jurisdiction." The lessor was to pay the driver's salary and indemnify Ryder against any loss resulting from the injury or death of the driver. Ryder retained authority to transfer the shipment and handle it according to its best judgment if Ryder deemed that the equipment was inadequate for any reason.

Farmer was injured while driving the tractor leased to Ryder. After the accident, Farmer filed a worker's compensation claim against Ryder and Hames Trucking Company. The administrative law judge found as a matter of fact that Ryder Truck Lines and Hames Trucking Company were Farmer's employers at the time of the accident. He found that Ryder had the right to and was legally required to maintain control over the truck and driver under the trip lease agreement and under Interstate Commerce Commission regulations. He further found that Hames Trucking Company maintained control of the truck and in so doing necessarily maintained control of the driver with respect to the outgoing trip. He held that the picking up of return loads was part and parcel of the equipment lease entered into between Hames Trucking Company and Martin. In return hauls, Martin was lowering the cost to Hames of the outbound loads by not returning empty, and thus the return haul was of monetary benefit to Hames Trucking Company. The administrative law judge found that at the time of the accident the truck was being returned to Hames and held that under the provisions of our worker's compensation laws, the employer, Hames, could not send an employee to a distant location and then deny any responsibility for his return. He awarded Harris $95 per week for the period of his incapacity.

Upon de novo review, the worker's compensation board reversed the award. The board found that Farmer had been operating the truck under the general supervision of Dan Martin. It found no employee-employer relationship existed

between Farmer and Ryder Truck Lines, Inc., or Hames Trucking Company. The board held that the proper test to be applied in determining the existence of an employee-employer relationship is "whether the alleged employer had the right to control the time, manner, and method of performance of the alleged employee's work duties, or whether the alleged employer assumed such control, regardless of whether he had the right to do so." The board found that Hames Trucking Company neither had the right to nor exercised any control over Farmer on his return trip to Georgia. The board further found that testimony of Ryder's representative clearly indicated that the language in the trip lease giving Ryder the right to control the tractor and trailer referred to results to be accomplished and was never understood to give Ryder the right to control Farmer as to the time, manner, and method of his driving to Georgia.1/ Consequently, the board reversed the administrative law judge (one director dissenting) and denied relief.

On appeal, the superior court affirmed. In a full court opinion, the Court of Appeals affirmed, with two judges dissenting. *Farmer v. Employers Insurance of Wausau*, 152 Ga. App. 608 (SE2d) (1979). The majority divided the right of control into two dimensions, "ministerial control" and "operational control." Ministerial control, reasoned the Court of Appeals, was control over the driver, and operational control was control over the equipment required by federal law and exercised by Ryder for the protection of the freight and the public. The Court of Appeals found that the driver and his expenses were paid by Martin and that Ryder could not hire or replace the driver.

One of our concerns in granting certiorari was the possible applicability of the "statutory employer" provision of our worker's compensation law, Code Ann. section 114-112, in light of *Holt v. Travelers Ins. Co.*, 224 Ga. 857 (SE2d) (1979).

/1/ Ryder's representative testified , inter alia, that during the trip lease, Farmer was under the direction and control of Ryder.

That Code section is inapplicable here for the reason that no claim for compensation was first instituted against the immediate employer, Martin, as required by that section. We are now concerned with whether the concept of ministerial and operational control should be introduced into our worker's compensation law.2/

The name of the case has been changed from *Farmer v. Employers Insurance of Wausau, et al.*, as it was in the Court of Appeals, to *Farmer v. Ryder Truck Lines, Inc.*, to more accurately reflect the issue in the case. Employers Insurance of Wausau insured Hames Trucking Company and we affirm the judgment of the Court of Appeals insofar as it held that Hames Trucking Company was not Farmer's employer at the time of the accident.

Regulations of the Interstate Commerce Commission require authorized carriers who lease equipment with drivers from

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/2/ At common law, a master was and is liable for torts committed by his or her servant in the execution of the master's business and within the scope of the employment. 20 E.G.L. Master and Servant section 32. A master is one who employs another to perform services and who controls or has the right to control the physical conduct of the person employed in the performance of those services. 20 E.G.L. Master and Servant section 2.

When our worker's compensation law was enacted, we adopted from the laws governing vicarious liability the control test for determining worker's compensation coverage. 29 E.G.L. Worker's Compensation section 18. "In determining whether or not the relationship of master and servant prevails in a compensation case, the same principles that exist under the common law obtain." *Travelers Insurance Co. v. Clark*, 58 Ga. App. 115, 121 (197 SE 650) (1938). Hence, when we define which persons are employees for worker's compensation purposes, we may at the same time be defining which persons are servants for tort liability purposes.

Thus, when Ryder accepted full responsibility to the public in respect to the equipment it was operating, it accepted at least partial responsibility for Farmer's negligent injury, if any, to a member of the motoring public. See Walter v. Dunlap, 368 F2d 118 (3rd Cir. 1966).

owners to issue receipts identifying the equipment, and specifying the date and time on which the lease begins and when it ends. The lease must provide that the lessee have exclusive possession, control, and use of the equipment for the duration of the lease, and that the lessee assume complete responsibility for the operation of the equipment for the duration of the lease.[3]

It may be argued that Farmer was an independent contractor as to Ryder, in that Ryder had only the right to require certain results in conformity with the contract and that Ryder did not have the right to control the time, manner and method of executing the work. Because there was no direct contract between Ryder and Farmer, their relationship to each other must be ascertained from the trip lease agreement between Ryder and Martin.

Under the trip lease in question the tractor and trailer were under the direction and control of Ryder.[4] The driver went with the equipment. Ryder controlled the delivery of the goods. Ryder told Farmer where and when to pick up the load. Farmer was allowed to choose which of the ICC approved routes he would travel but Ryder then adopted that route and told Farmer not to deviate from it. Ryder told Farmer where and when to deliver the load. These are pertinent factors to be considered in determining whether Ryder had control over Farmer as to the return trip.

In *Ratliff v. Liberty Mutual Ins. Co.*, 149 Ga. App. 211 (253 SE2d 799) (1979), the court found the driver of a leased

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/3/ See generally 49 CFR sections 1057.11, 1057.12, formerly 49 CFR section 1057.4. Pursuant to 49 USCA section 304(e), the ICC is authorized to prescribe such regulations governing motor carriers using non-owned vehicles as necessary to assure that such carriers will have full direction and control of such vehicles and will be responsible for the operation thereof as if they were the owners.

/4/ The lease involved in *Montgomery Trucking Co. v. Black*, 231 Ga. 211 (200 SE2d 882) (1973), was not subject to, or did not comply with, the ICC regulations applicable here.

tractor to be an employee of the lessee for worker's compensation purposes notwithstanding the fact that the "employer" leased the rig rather than owned it.

Ryder argues that it did not hire and could not fire Farmer. However, it could have declined to enter into this trip lease with Farmer as driver, and it could terminate the haul by transferring the shipment if it deemed the equipment to be inadequate for any reason. It is true that it was Martin who actually hired, paid and could fire Farmer. Ryder on the other hand could effectively do much the same thing and it controlled the details of the loading, the route and the unloading of the shipment even to the exclusion of Martin.

"Under general legal principles, it is well settled that the fact that an employee is the general servant of one employer does not prevent him from becoming the particular servant of another under special circumstances, and it is true, as a general proposition, that when one person lends or hires his servant to another for a particular employment, the servant, as to anything done in such employment, must be dealt with as the servant of the person to whom he is lent or hired, although he remains the general servant of the other person. In actions at common law, to recover damages alleged to have been caused by the servant of the defendant, the criterion by which to determine whether the relation existed as alleged is to ascertain whether, at the time of the injury, the alleged servant was subject to the defendant's orders and control and was liable to be discharged by him for disobedience to orders or for misconduct. [Citations omitted.] The same rules have been held to be applicable in determining the existence or non-existence of the relation of employer and employee in cases arising under compensation acts." *United States Fidelity and Guaranty Co., et al. v. Stapleton, et al.*, 37 Ga. App. 707, 710 (141 SE 506) (1928). The *Stapleton* case, supra, involved the driver of a truck leased to a construction company. There it was held that the construction company was the employer of the borrowed servant for worker's compensation purposes notwithstanding the fact that the driver's wages were not paid to him

directly from the construction company.

Ryder argues that the better reasoned view is expressed in Tretter v. Dart Transit Co., 135 NW2d 484 (271 Minn. 131) (1965). There the owner leased his tractor to be driven by himself to a certified common carrier pursuant to a one year lease containing control provisions similar to the trip lease involved here. The driver died in an accident and the Minnesota Supreme Court denied his widow's claim for worker's compensation. The fact that the driver was the lessor-owner of the tractor makes that case different from this one insofar as the loaned servant doctrine is concerned. Moreover, the Minnesota court acknowledged that the ICC regulations, as drawn, do not mandate that a driver of a leased vehicle be, or negate that the driver is, the employee of the lessee.

The decision of the United States Supreme Court on which the Court of Appeals relied for the distinction between ministerial and operational control, Transamerican Freight Lines, Inc. v. Brada Miller Freight Systems, Inc., 423 U.S. 28 (96 SC 229, 46 LE2d 169) (1975), involved the validity of an indemnification provision in a trip lease, in view of the ICC regulations and as against a public policy challenge, whereby the lessor agreed to indemnify the lessee for claims arising out of the lessor's negligence. The Supreme Court upheld the validity of the indemnification provision. In passing, the Court observed that the lessor's furnishing of the driver allows "an aspect of control, in a sense, to remain in the lessor" (423 U.S. at 39). The Court described the lessor's control over the driver as ministerial and the lessee's control as "operating authority" and "that *ultimate control* in the lessee which makes and keeps it responsible to the public, the shipper, and the Commission" (423 U.S. at 39, emphasis supplied). Thus, the Supreme Court considered the lessee's control to predominate over the lessor's.

In White v. Excalibur Ins. Co., 599 F2d 50 (5th Cir. 1979), Crawford leased his trucks with drivers to Superior Trucking Co., an ICC motor carrier. One of these drivers was killed. His mother sued Superior in tort and then sued Superior's insurance company on the judgment in district court. The circuit court

held that the deceased was an employee of Superior within the meaning of 49 USC section 304(e), supra, and that as the employer, Superior was immune to suit in tort but was subject to Georgia's worker's compensation act. Construing federal law, the court said (599 F2d at 54): "Because Congress has created the statutory employee status, and, as we have concluded, the carrier-lessee is deemed an 'employer' for purposes of the Georgia Workmen's Compensation Law, the Georgia cases dealing with independent contractors are not applicable."

We find that the Court of Appeals erred insofar as Ryder Truck Lines, Inc., is concerned in dividing control into two parts for worker's compensation purposes. We find further that the Worker's Compensation Board erred in failing to recognize the right of control given Ryder in the trip lease, as opposed to the testimony of Ryder's representative interpreting that lease contrary to its terms.

On the other hand, the terms of the equipment lease between Martin and Hames Trucking Company clearly show that Hames Trucking Company exercised no control over Martin's drivers regarding return hauls of regulated commodities and Hames Trucking Company thus was not an employer of Farmer at the time of the accident.

Judgment affirmed in part, reversed in part. All the Justices concur, except Jordon, P.J., who concurs in the Judgment only.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

ATLANTA January 9, 1980

Dear Sir:

Case No. 35883. HARRIS FARMER V. EMPLOYERS INSURANCE OF WAUSAU ET AL.

The Supreme Court today GRANTED the writ of certiorari in this case. All the Justices concur, except Jordan, Bowles and Marshall, J. J., who dissent.

THIS CASE WILL BE ASSIGNED TO THE MARCH 1980, ORAL ARGUMENT CALENDAR.

The Court is particularly concerned with the following: The applicability to this case of the "statutory employer" provision (Code Ann. section 114-112) in light of *Holt v. Travelers Insurance Company*, Case No. 35094, decided 12-05-79.

Briefs filed in the Court of Appeals are included in the record presented to this court. Additional briefs are not required but may be submitted.

Very truly yours,

Mrs. Joline B. Williams, Clerk

NOV 30 1979

57856. FARMER v. EMPLOYERS INSURANCE OF WAUSAU, et al.

UNDERWOOD, Judge.

In this workers' compensation proceeding it was determined that claimant suffered compensable injuries arising out of and in the course of his employment as a truck driver with Ryder Truck Lines, Inc. and Hames Trucking Company. On appeal to the full board, and upon de novo consideration of all the evidence, the board determined, with one director dissenting, that "Hames Trucking Company neither had the right to nor exercised any control over claimant in reference to his trip back into Georgia . . ." The board also determined that the language of the "trip lease" entered into by Ryder and Dan Martin, the owner of the tractor in question, refers to results to be accomplished and was "never understood to give Ryder the right to control claimant as to the time, manner, and method of his driving their trailer to Georgia." The board then concluded that "no employer-employee relation existed between claimant" and the two trucking concerns, and the claim was denied. On appeal to the superior court the denial was affirmed. Claimant appeals; we likewise affirm.

As noted above, the tractor which claimant was driving was owned by Dan Martin, who leased considerable trucking equipment (tractors and trailers) to Hames Trucking, Inc. The agreement between Martin and Hames as to the leased equipment provided that return loads "from without the State of Georgia to some destination within the State of Georgia" were the "sole responsibility of [Martin] who shall be entitled to all revenue for loads that are trip leased to a common regulated carrier." The contract called for Martin "to furnish at his expense, competent, qualified, licensed and experienced operators to operate said leased equipment" who were to be the employees of Martin, and he was to be solely responsible for

the "compensation, selection, supervision and control of said operators," although Hames would have the right to request Martin to replace any operator who "may not be qualified." Another provision of the lease stated that "the operators of said equipment shall be under the exclusive control, direction, jurisdiction and supervision of [Martin]. [Hames] shall only have the authority to designate the destination of outgoing loads."

The record reveals that the claimant driver hauled for Martin a load of poultry from Georgia to Chicago. As is common practice, the driver then located a regulated carrier, Ryder, which had a trailer that needed to be delivered to Georgia on the return trip. The driver, representing Martin, signed as agreement with Ryder, referred to as a "one-way trip lease," providing for the transportation of goods in interstate commerce "under the direction and control of Ryder Truck Lines, Inc." The lease stated that "the leased equipment under this agreement is in the exclusive possession, control, and use of the authorized Lessee [Ryder] and that the Lessee assumes full responsibility in respect to the equipment it is operating to the public, the shippers, and all regulatory bodies having jurisdiction. It is agreed that Lessor [Martin] will carry acceptable Public Liability and Property Damage Insurance." It further provided that Martin was responsible for the maintenance of the tractor, payment of the driver and payment for any citations or fines received by him.

During the return trip from Chicago an accident occurred in which the driver received permanent injuries. He subsequently filed this claim seeking workers' compensation contending he was an employee of Ryder and Hames at the time of the accident.

1. The issue in this case is whether the "control" provisions of a "trip lease" agreement, pursuant to which the owner of a tractor unit leases such unit to a regulated carrier for a single trip to deliver a single trailer of freight, makes the driver an employee of the regulated carrier for purposes of determining workers' compensation coverage. It is urged that because applicable federal legislation, 49 U.S.C.A. section 304, requires

that the equipment in a trip lease arrangement be under the control of the regulated carrier, the driver becomes an employee of the regulated carrier for the term of the lease, i.e., during the one-way trip.

This, we believe, is an unnecessarily narrow, one-dimensional test for determining whether there exists an employee-employer relationship and ignores some practical aspects of a trip-lease transaction. It also goes beyond the public purpose which Congress sought to serve in mandating that the regulated carrier exercise "control" in a trip-lease situation. The United States Supreme Court, while not addressing the question presented in this case, has dealt with the background and purpose of the "control and responsibility" provisions of 49 U.S.C.A. section 304 in Transamerican Freight v. Brada Miller Freight Systems, 423 U.S. 28 (1975). In that case the Court recognized the distinction between operational control concerning the equipment and other aspects of the shipment and ministerial control concerning the driver. "It is to be acknowledged, to be sure, that the lessor's furnishing of a driver allows an aspect of control, in a sense, to remain in the lessor. But this is ministerial control, not control of the kind with which the Commission was concerned [in promulgating regulations under the legislation] . . . Its concern . . . was with operating authority, with routes and destinations and classes of freight, with the integrity of certifications, and with that ultimate control in the lessee that makes and keeps it responsible to the public, the shipper, and the Commission." Transamerican Freight v. Brada Miller Freight Systems, supra, at p. 39.

Our conclusion is that the "control" provisions which were included in the written lease pertaining to this "trip lease" were mandated by Congress to make the regulated carrier responsible for damages to the freight during shipment and to provide other protections to the public whom the carrier has been authorized to serve. We can find no persuasive indication that these provisions were intended to affect the "ministerial" aspects of the relationship between the lessor and the driver, or to make the driver an employee of the regulated carrier. Ryder could not

fire the driver or replace him with another driver. The driver was paid by Martin who also paid for all expenses of the trip. The nature of the relationship between the claimant and Ryder does not satisfy our prior standards for finding an employment relationship. *Sanders Truck Co. v. Napeier*, 117 Ga. App. 561 (161 SE2d 490) (1968); *Pilcher v. Wise Electric Co.*, 129 Ga. App. 92 (198 SE2d 713) (1975).

2. As Hames was clearly not claimant's employer with respect to this occurrence, the board properly denied compensation as to it.

Judgment affirmed. Deen, C. J., Quillian, P. J., Smith, Shulman, Birdsong and Carley, J. J., concur. McMurray, P. J., and Banke, J., dissent.

57856. FARMER v. EMPLOYERS INSURANCE OF WAUSAU, et al.

McMURRAY, Presiding Judge, dissenting.

This is a workers' compensation case in which claimant was a truck driver injured in a highway collision while in the course of his employment. He was driving a tractor trailer in which he was transporting goods in interstate commerce. Without doubt he was the employee of someone.

The issue here is to determine which of three concerns were his employer or employers. The truck which he was driving was owned by Dan Martin who leased considerable trucking equipment (tractors and trailers) to Hames Trucking, Inc. The lease agreement as to the tractor in question which claimant was driving was executed by "Hames Trucking, Inc.," by C. Scott Hames, Lessee. It involved shipment of goods known as "outgoing loads." With reference to return loads "from without the State of Georgia to some destination within the State of Georgia," this became the "sole responsibility of Lessor who shall be entitled to all revenue for loads that are trip leased to a common regulated carrier." If there were return loads of exempt commodities, same were to be in the name of "Hames Trucking, Inc." and covered by liability and cargo insurance only when lessee was notified in advance of shipment with cost to lessee. This contract called for the lessor "to furnish at his expense, competent, qualified, licensed and experienced operators to operate said leased equipment." Said operators were to be the employees, agents and/or servants of the lessor who was to be solely responsible for the "compensation, selection, supervision and control of said operators," although the lessee would have the right to request the lessor to replace any operator "which may not be qualified." Another division of that lease stated unequivocally that, "the operators of said equipment shall be under the exclusive control, direction, jurisdiction and supervision of Lessor. Lessee shall only have the authority to designate the destination of outgoing loads."

However, at the time in question when the driver was injured he had transported for Hames Trucking, Inc. a load of "exempt commodities" (chickens) from metropolitan Atlanta to Chicago. A contract was then executed with Ryder Truck Lines, Inc., as lessee, and "Hames Trucking Co. . . send check to Dan Martin" for the transportation of goods in interstate commerce from Deerfield, Illinois to Atlanta, Georgia, "*under direction and control of Ryder Truck Lines, Inc.*" (Emphasis supplied.) This lease clearly stated that, "the leased equipment under this agreement is *in the exclusive possession, control, and use of the authorized carrier Lessee* and that *the Lessee assumes full responsibility in respect to the equipment it is operating to the public, the shippers, and all regulatory bodies having jurisdiction.* It is agreed that Lessor will carry acceptable Public Liability and Property Damage Insurance. Lessor agrees to reimburse and otherwise indemnify Lessee for any and all losses sustained by Lessee resulting from the use of the aforesaid equipment." (Emphasis supplied.)

The worker's claim was filed against Ryder Truck Lines, Inc. and Hames Trucking Company and their respective insurers. The administrative law judge, hearing the case and based on the above leases, as well as other evidence, made a determination that the injuries sustained were accidental and covered by workers' compensation *while arising out of and in the course of his employment with Ryder Truck Lines, Inc.* and Hames Trucking Company.

On appeal to the full board and upon de novo consideration of all evidence the board determined, with one director dissenting, that "Hames Trucking Company neither had the right to nor exercised any control over claimant in reference to his trip back into Georgia. . ." The board also determined that the language of the trip lease refers to results to be accomplished and "were never understood to give Ryder the right to control claimant as to the time, manner, and method of his driving their trailer to Georgia." The board then concluded that "no employer-employee relation existed between claimant" and the two trucking concerns, and the claim was denied. On appeal to

the superior court the denial was affirmed. The majority affirms. To this I cannot agree for the following reasons.

1. Based upon the evidence and the law of Georgia with reference to employee status there is no doubt that the claimant was in the employ of Ryder Truck Lines, Inc. shown in the award and in the hearing since the truck was involved in interstate commerce subject to the laws and regulations of the Interstate Commerce Commission in effect on November 8, 1977. Neither the superior court nor the board was in error in denying the claim as to "Hames Trucking, Inc." (Hames Trucking Company) as this trucking concern hauls only exempt products and is, therefore, not subject to Interstate Commerce Commission regulations. See *Howard Sheppard, Inc. v. McGowan*, 137 Ga. App. 408, 410 (224 SE2d 65); *American Motorists Insurance Company v. Brown*, 128 Ga. App. 813 (198 SE2d 348); *Fidelity & Casualty Company of New York v. Windham*, 209 Ga. 592, 593 (74 SE2d 835); *Hodges v. Doctors Hospital*, 141 Ga. App. 649, 653 (234 SE2d 116); *Bibb Manufacturing Co. v. Martin*, 53 Ga. App. 137 (185 SE2d 137).

2. The trip lease prepared by Ryder Truck Lines, Inc. and introduced by it to define the relationship between the claimant and Ryder Truck Lines, Inc. shows unequivocally that the leased vehicle (tractor and trailer) was, "under direction and control of Ryder Truck Lines, Inc. . .," as the carrier from Deerfield, Illinois to Atlanta, Georgia. Not only was the tractor and trailer under Ryder's control, but the law and regulations as well as the contract gave it exclusive possession, control and use as the authorized carrier lessee which assumed full responsibility in respect to the equipment. It thus had the right to control the manner and means of the work performed by the claimant to such as extent to create an employer/employee relationship. See *Montgomery Trucking Company, Inc. v. Black*, 231 Ga. 211, 213 (200 SE2d 882); *Blair v. Smith*, 201 Ga. 747 (41 SE2d 133); *American Casualty Company v. Harris*, 96 Ga. App. 720 (101 SE2d 618); *Liberty Mutual Insurance Company v. Kinsey*, 65 Ga. App. 433 (16 SE2d 179); *Ratliff v. Liberty Mutual Insurance Company*, 149 Ga. App. 211, 212 (3) (253 SE2d

799); *Golosh v. Cherokee Cab Company*, 226 Ga. 636 (176 SE2d 925). The law requires and demands that the equipment engaged in interstate commerce be under the exclusive custody and control of the carrier. 49 USCA section 304 (since repealed in part October 17, 1978). Consequently, the claimant was the driver of the carrier, regardless of any arrangement that the carrier had with the lessor as to the equipment, payment of the driver or other indemnification agreement with respect to same. See *Dove v. National Freight, Inc.*, 138 Ga. App. 114, 116 (4) (225 SE2d 477); *T. G. Stegall Trucking Company v. Tower Lines, Inc.*, 135 Ga. App. 286, 287 (2) (217 SE2d 488). Compare *Mitchell v. Burden Brothers, Inc.*, 126 Ga. App. 75 (189 SE2d 909); *Farmers Mutual Exchange of Commerce, Inc. v. Sisk*, 131 Ga App. 206 (205 SE2d 438); *Flowers v. U.S.S. Agri-chemicals*, 139 Ga. App. 430 (228 SE2d 392).

The denial of the claim has been made on the erroneous legal theory that the claimant could not have been an employee of the carrier since the tractor was owned and operated by another leased to that carrier. By law the carrier has been *required to assume control of the manner, means and handling of this tractor trailer involved in interstate commerce.* The superior court, as well as the board, erred in determining there was no employee/employer relationship between the claimant and the carrier (Ryder Truck Lines, Inc.). *Barbree v. Shelby Mutual Insurance Company*, 105 Ga. App. 186, 188 (123 SE2d 905); *Miller v. Travelers Insurance Company*, 111 Ga. App. 245, 248 (141 SE2d 223); *Thomas v. Ford Motor Company*, 123 Ga. App. 512 (181 SE2d 874); *Fleming v. United States Fidelity & Guaranty Company*, 137 Ga. App. 492 (2) (224 SE2d 127).

I therefore respectfully dissent. I am authorized to state that Judge Banke joins in this dissent.

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IN THE SUPREME COURT
OF THE UNITED STATES

RYDER TRUCK LINES, INC. :

Petitioner :

VS. : CASE NO. 80-204

HARRIS FARMER :

Respondent :

MOTION TO PROCEED IN FORMA PAUPERIS

Now comes HARRIS FARMER, Respondent in the above styled case, and moves this Court for an order to proceed in forma pauperis and in support thereof shows to the Court the following:

1.

HARRIS FARMER is the Respondent in the above styled Petition for a Writ of Certiorari to the Supreme Court for the State of Georgia.

2.

The Petition challenges a decision by the Georgia Supreme Court in a workmen's compensation case in which Respondent received an award of total disability benefits for an injury arising out of the course of his employment.

3.

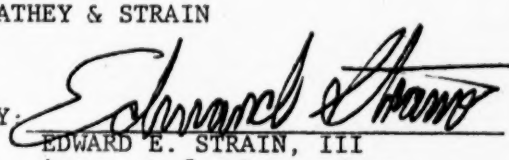
As a result of the injury Respondent was, and is, totally disabled and incapable of gainful employment.

4.

Respondent is unable to pay the costs of printing briefs, or other court costs, or to give security therefor, as evidenced by Respondent's affidavit which is attached hereto.

WHEREFORE, Respondent prays that the Supreme Court of the United States enter an order allowing him to proceed in forma pauperis in the within and foregoing case.

CATHEY & STRAIN

BY: 

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IN THE SUPREME COURT

OF THE UNITED STATES

NO. 80-204

RYDER TRUCK LINES, INC.,

Petitioner

VS.

HARRIS FARMER,

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

Edward E. Strain, III
Attorney at Law

COUNSEL FOR RESPONDENT

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IN THE SUPREME COURT
OF THE UNITED STATES

RYDER TRUCK LINES, INC. :

Petitioner :

VS. : CASE NO. 80-204

HARRIS FARMER :

Respondent :

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

STATEMENT OF THE CASE

Respondent was totally disabled in a vehicular collision while he was driving a truck hauling regulated commodities for RYDER TRUCK LINES, INC., Petitioner herein. (R. 5, 11-15, 47, 114-116.) Respondent filed a claim against Petitioner for workmen's compensation benefits in Georgia. The only issue in dispute between the parties was whether Respondent was the employee of Petitioner at the time of the injury.

Respondent prevailed in the trial court. The case was then appealed by Petitioner and ultimately resulted in a decision in favor of Respondent by the Georgia Supreme Court. Farmer v. Ryder Truck Lines, Inc., 245 Ga. 734.

The evidence at trial showed that once Respondent began hauling regulated commodities for Petitioner he was controlled by Petitioner as to the manner and means of performing his work. Petitioner told Respondent where to pick up the commodities and where to deliver them. (R. 7, 36, 39, 60-81, 95.) Petitioner instructed Respondent what time to pick up the commodities and what time they had to be delivered at the point of destination. (R. 7, 10, 60-61, 95.) Petitioner performed a safety inspection on the truck Respondent was to

drive. (R. 8, 140-141; Defendant's Exhibit 1) Petitioner required Respondent to follow a specified route while driving the truck on the highways. (R. 8, 37, 83-84, 95.) Petitioner controlled the number of hours driven by Respondent by requiring Respondent to turn in a log book which reflected the number of hours driven by Respondent. (R. 16, 79-80, 85.) Petitioner supplied Respondent with an advance of $150.00 to cover expenses during the trip. (R. 10, 31, 97-98.) Petitioner also signed a trip lease, which was in effect during the duration of the trip on which Respondent was injured, and which stated that the truck Respondent was driving was to be under the direction and control of Petitioner. (R. 71, 140-141.)

No constitutional issues were raised by Petitioner at trial.

REASONS THE WRIT SHOULD BE DENIED

I. PETITIONER HAS WAIVED ITS RIGHT TO ASSERT A VIOLATION OF ITS CONSTITUTIONAL RIGHTS.

Petitioner makes two constitutional arguments to this Court. Petitioner claims first that the decision by the Georgia Supreme Court violates its right to equal protection of the laws under the Fourteenth Amendment. U.S. Const. amend. XIV. Petitioner also claims the decision creates an impermissible burden upon interstate commerce. U.S. Const. art. 1, §8 cl. 3.

Both these arguments are grounded upon the implicit assertion that the two constitutional depravations occurred when the Georgia Supreme Court relied upon I.C.C. regulations and the concomitant trip lease in deciding that Respondent was the employee of Petitioner under Georgia workmen's compensation law. 49 C.F.R. §1057.4(a)(4); Ga. Code Ann. §114-101. Indeed, the only way in which constitutional issues are even arguably involved in this litigation is by injection of the I.C.C. regulations and the trip lease.

However, Petitioner failed to raise either of these constitutional issues at trial. Petitioner was well aware that both the I.C.C. regulations and the trip lease were being used to establish its status as the employer of Respondent, and yet Petitioner remained silent. (R. 81.) Ironically, it was Petitioner which offered into evidence the trip lease now claimed to effect the constitutional depravations. (R. 140-141; Defendant's Exhibit 1.)

In Georgia courts, as well as the federal system, a constitutional challenge must be made at trial or it is waived. City of Atlanta v. Columbia Pictures Co., 218 Ga. 714, 719 (1963); Harrington v. City of Atlanta, 224 Ga. 465 (1968). Because Petitioner failed to properly present its alleged constitutional error at trial, these arguments are waived and should not be heard by this Court.

II. THE RECORD CONTAINS NO EVIDENCE SHOWING A BURDEN ON INTERSTATE COMMERCE.

Petitioner argues that the decision by the Georgia Supreme Court creates a constitutionally impermissible burden on interstate commerce. U.S. Const. art. 1, §8, cl. 3. In support of this argument Petitioner cites the cases of Bibb v. Navaho Freight Lines, 359 U.S. 520, 526, and Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 445.

In both these cases evidence was presented by the aggrieved parties which showed factual support for the assertion that a burden was placed upon interstate commerce by state regulations. In this case the record is devoid of any evidence tending to show a burden on interstate commerce. Petitioner made no showing whatever that holding it an employer under Georgia workmen's compensation law would effect interstate commerce.

In this regard it should be noted that Petitioner's brief is replete with factual statements and assertions which

are not in the record. For example, Petitioner states that Ryder Truck Lines alone enters into approximately 4,295 trip leases per month. This fact is not in the record. Petitioner states that workmen's compensation coverage is a costly burden on the regulated carrier. This fact is not in the record. Petitioner states that the number of one way trip leases between regulated carriers and private carriers is huge. This fact is not in the record. Petitioner states that the cost of providing temporary coverage may well outweigh the benefits regulated carriers derive from one way trip leases. There is no evidence in the record as to the cost of providing temporary coverage.

This Court should not consider Petitioner's argument that a burden has been placed upon interstate commerce when this issue was neither asserted in the trial court nor supported by a proper evidentiary showing in the record.

III. THE DECISION BY THE GEORGIA SUPREME COURT IS BASED UPON STATE LAW AND DOES NOT PRESENT A FEDERAL QUESTION.

Petitioner claims the decision by the Georgia Supreme Court decides a federal question because that Court holds Petitioner is a statutory employer under I.C.C. regulations. 49 C.F.R. §1057.4(a)(4); See, U.S. Sup. Ct. Rule 19, 28 U.S.C.A. According to Petitioner the Georgia Supreme Court has dispensed with the prior common law method of determining the employer-employee relationship and has made Respondent an employee solely by virtue of I.C.C. regulations.

A careful reading of the Georgia Supreme Court's decision shows this argument has no merit. The Georgia Supreme Court based its decision upon what is, and what always has been, the test in the State of Georgia for determining the employer-employee relationship. That test is whether the

employer has the right to control the time, manner, and method of performing the work. Ga. Code Ann. §114-101; 105-501; 105-502(5) and annotations thereunder; e.g. Barbaree v. Shelby Mutual Insurance Co., 105 Ga. App. 186, 188.

The Georgia Supreme Court applied that well-established test in this case. The Court held that because of the terms of the trip lease Petitioner signed, the right to control was present under state law. To be sure, evidence of control came about as a result of federal regulation: The I.C.C. regulations required the carrier to enter into the trip lease. 49 C.F.R. §1037.4. Nevertheless, the test applied by the Georgia Supreme Court was one of state law. The Court did not decide a federal question of substance. U.S. Sup. Ct. Rule 19, 28 U.S.C.A.

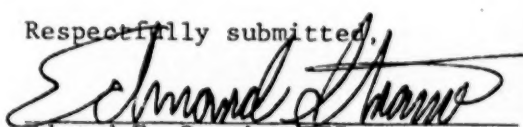
IV. EVEN IF PETITIONER HAD NOT WAIVED ITS CONSTITUTIONAL CHALLENGE THERE IS NO DENIAL OF EQUAL PROTECTION.

In its decision the Georgia Supreme Court holds that under the facts of this case Petitioner exercised such control over Respondent that Respondent became Petitioner's employee for the purpose of Georgia workmen's compensation law. Contrary to the Petitioner's argument, there was no denial of equal protection by this holding. The Georgia court did not rule Petitioner an employer merely because of its status as a regulated carrier. Petitioner became an employer because of the right to control it enjoyed over Respondent. In this respect Petitioner was treated equally with all other employers, whether regulated carriers or not, which exercise the requisite degree of control under Georgia Law.

CONCLUSION

For all the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, EDWARD E. STRAIN, III, a member of the bar of the Supreme Court of the United States and counsel for the Respondent, HARRIS FARMER, hereby certify that I have served three copies of the foregoing Brief of Respondent in Opposition to the Petition for a Writ of Certiorari to the Supreme Court of the State of Georgia, by depositing same in the United States Mail, first class postage prepaid, to:

Mr. George L. Pope, Jr.
Swift, Currie, McGhee & Hiers
771 Spring Street, N.W.
Atlanta, Georgia 30379

This 28th day of August, 1980.

Edward E. Strain

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